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Supreme Court of The United States

OCTOBER TERM, 1957

No. 57

JAMES EARL BYRD, *Petitioner*

versus

BLUE RIDGE RURAL ELECTRIC COOPERATIVE, INC., *Respondent*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR RE-HEARING

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THE RESPONDENT-PETITIONER PRAYS THAT THIS COURT GRANT A RE-HEARING OF PART II OF THE MAJORITY OPINION DELIVERED BY MR. JUSTICE BRENNAN ON MAY 19, 1958, REMANDING THE CASE TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT. THIS PETITION IS BASED UPON THE GROUNDS HEREINAFTER SET FORTH.

FIRST

In deciding that the Federal Courts should not follow what the majority opinion designates as a State rule and in holding that on remand of the case to the Fourth Circuit Court of Appeals and from that Court to the Federal District Court, if not made unnecessary by the decision of other questions, the factual issue must be decided by the jury rather than by the Court, it is respectfully submitted that the Court overlooked or misapprehended prior decisions of this Court to the effect that the Workmen's Compensation Acts of the States and of the District of Columbia abolish all rights, both of the employer and the employee under the common law, and substitute there-

for statutory rights, unknown to the common law, which are equitable in nature. The Court has held in these decisions that the acts do not violate the Seventh Amendment to the Constitution in taking away the right of trial by jury and in submitting therefor the modes of determining factual issues as therein provided. That accordingly in the matter presently before the Court, the South Carolina Workmen's Compensation Act has completely divested the jury of any function in deciding questions pertaining to the defense based upon the act and that all questions both of law and of fact must be decided in accordance with the terms and provision of the South Carolina Act and the interpretation placed thereon by the South Carolina Supreme Court.

One of the decisions which it is respectfully contended was overlooked by the Court is the case of *Mountain Timber Company v. State of Washington*, 37 S. Ct. 260, 243 U. S. 219. In that case, the State of Washington instituted action to recover certain premiums due by the Mountain Timber Company which will be hereinafter referred to as the Company. It was contended that these premiums were due under the Workmen's Compensation Act of that State. The Company demurred, raising constitutional objections to the Act. The Supreme Court of Washington overruled the objections and affirmed the judgment in favor of the State. Upon appeal to the United States Supreme Court, the judgment of the State Courts was affirmed.

Of the constitutional objections raised by the Company, the one pertinent here was the objection that the Act was unconstitutional in that it violated the Seventh Amendment. Concerning this, this Court said:

> "This 7th Amendment, with its provision for preserving the right of trial by jury, is invoked. It is conceded that this has no reference to proceedings in the State courts (*Minneapolis and St. L. R. Co. v. Bombolis*, 241 U. S. 211, 217, 60 L.ed 961, 963, L.R.A. 1917A, 86, 36 Sup. Ct. Rep. 595), but it is urged that the question is material for the reason that if the act be constitutional it must be followed in the Federal Courts in cases that are within its provisions. So far

as private rights of action are preserved, this is no doubt true; but, with respect to those, we find nothing in the act that excludes a trial by jury. As between employee and employer, the act abolishes all right of recovery in ordinary cases, and therefore leaves nothing to be tried by jury."

In *New York Central Railroad v. White*, 243 U.S. 188, 37 S.Ct. 247, 254, this Court said:

"No question is made but that the procedural provisions of the act are amply adequate to afford the notice and opportunity to be heard required by the 14th Amendment. The denial of a trial by jury is not inconsistent with 'due process.' *Walker v. Sauvinet*, 92 U.S. 90, 23 L.ed 678; *Frank v. Mangum*, 237 U.S. 309, 340, 50 9 Led. 960, 985, 35 Sup. Ct. Rep. 582."

The foregoing quote was said in connection with a similar attack upon a similar Workmen's Compensation Act, this time the Act being attacked under the 14th Amendment instead of the 7th.

In *National Labor Relations Board v. Jones and Laughlin Steel Corporation*, 301 U.S. 1, 57 S. Ct. 615, an attack was made upon the National Labor Relations Act based upon the Seventh Amendment. Concerning this attack, this Court said:

"Respondent complains that the Board not only ordered reinstatement but directed the payment of wages for time lost by the discharge, less amounts earned by the employee during that period. This part of the Order was also authorized by the Act. (Section 10 (c)). It is argued that the requirement is equivalent to a money judgment and hence contravenes the Seventh Amendment with respect to trial by jury. The Seventh Amendment provides that 'In suits at common law, where the value in controversy shall exceed twenty dollars; the right of trial by jury shall be preserved.' The amendment thus preserves the right which existed under the common law when the Amendment was adopted." (Cases cited). "Thus, it has no application to cases where recovery of money damages is an incident to equitable relief even though damages might have been recovered in an action at law. . . . It does not apply where the proceeding is

not in the nature of a suit at common law. *Guthrie National Bank v. Guthrie,* 173 U.S. 528, 537, 19 S. Ct. 513, 43 L ed. 796.

"The instant case is not a suit at common law or in the nature of such a suit. The proceeding is one unknown to the common law. It is a statutory proceeding. Reinstatement of the employee and payment for time lost are requirements imposed for violation of the statute and are remedies appropriate to its enforcement. The contention under the Seventh Amendment is without merit."

Also, see *Rowlette v. Rothstein Dental Laboratories, Inc.,* 63 F. 2d 150. Cert. den. 289 U.S. 736, 53 S. Ct. 657; *Scrinko v. Reading Co.,* 117 F. Supp. 603 *Agwilines, Inc. v. National Labor Relations Board,* 87 F. 2d 146.

The foregoing cases amply show that this Court has on prior occasions determined that Workmen's Compensation Acts of the various states and other similar social legislation are wholly substitutional in character and are in derogation of the common law creating rights and remedies which were unknown to the common law. These statutes are equitable in nature and it is respectfully submitted that the guarantee of the Seventh Amendment has nothing to do with these acts. Therefore, all questions concerning these acts are for determination by the Court and no jury issue is presented by raising the terms and provisions of the Act as a defense.

SECOND

In making the decision reflected in Point II of the majority opinion, it is respectfully submitted that the Court overlooked or misapprehended the fact that the defense of the Respondent-Petitioner strikes at the jurisdiction of the Federal District Court over the cause of action as contradistinguished from a factual immunity. Questions pertaining to the jurisdiction of a Court over the person or subject matter are unquestionably legal in nature and impose questions to be decided by the Court and not by a jury.

It must be kept in mind that the answer to this jurisdictional question involved a great deal more than the sole

issue with which this Court deals. Other pertinent issues, both legal and factual and some consisting of a mixture thereof, had been previously eliminated by concession and admission of counsel in the pre-trial conference. The sole remaining issue is said to be a factual one, but we submit that it is so entwined with a knowledge of the defense in its entirety, with the case law of the State of South Carolina which formulates the tests to be applied in determining this issue, and with the theory and effect of the Workmen's Compensation Act of that State, that it requires a decision by a legal mind rather than the lay juror.

The majority opinion is predicated upon the thought that the question for determination is purely a factual one which is ordinarily to be passed upon by the jury. But it is submitted that the Court has remanded this case with directions that, if it be made necessary by the decision of the Court of Appeals on the other defenses, the jury determine whether the District Court has jurisdiction of the matter. The Federal System of allocating functions between Judge and jury does not require this.

That the defense strikes at the jurisdiction of the Federal District Court is beyond question. *Marchbanks v. Duke Power Company*, 190 S.C. 336, 2 S.E. 2d, 825; *Bozeman v. Pacific Mills, et al.* 193 S.C. 479, 8 S.E. 2d, 878; *Smith et al. v. Fulmer*, 198 S.C. 91, 15 S.E. 2d 681; *Hopkins v. Darlington Veneer Company, et al.* 208 S.C. 307, 38 S.E. 2d 4; *Adams v. Davison-Paxon Company* 230 S.C. 532, 96 S.E. 2d 566, and other cases cited in footnote 8 in the majority opinion dealing with point II.

The foregoing South Carolina Supreme Court decisions adequately show that the question presently before the Court is a question of the jurisdiction of the Federal District Court. Questions of jurisdiction must be said to be matters of substantive law rather than procedural. The theory of *Erie R. Co. v. Tompkins*, 304 U.S. 64, requires that this Court follow the substantive law of South Carolina in determining this issue.

In this connection, it must be remembered that the South Carolina Workmen's Compensation Law is not mandatory; either the employer or the employee may elect not to be bound by the Act. Failure to so elect, however, binds both to the

rights and obligations of the Act. Here, neither party had elected not to be bound under the act. Both are therefore bound by the terms and provisions of the Act. Neither party could complain because the act was in derogation of the common law and took away the right to a trial by jury. The South Carolina Supreme Court in the case of *Bagwell v. Ernest Barwell, Inc.* 227 S.C. 168, 87 S.E. 2d 583, said:

> "At the outset, it might be stated that the Workmen's Compensation Act is a form of social legislation wherein and whereby the employer and employee surrender benefits previously enjoyed under the common law in exchange for other benefits provided under the Act."

We most respectfully submit that the Court in the majority opinion overlooked the fact that the parties had elected to have the Court rather than the jury determine all matters, both of fact and of law, with regard to the defense raised asserting the provisions of the Workmen's Compensation Act.

THIRD

The majority opinion in discussing Point II based its decision upon its determination that the South Carolina Supreme Court in the long line of decisions represented by the case of *Adams v. Davison-Paxon Co.*, supra, expressed no reason why the Court must decide the jurisdictional question including the factual findings implicit therein. It is respectfully submitted that the reasons for these decisions are inherent.

First, being a jurisdictional problem, it is within the function of the Court rather than jury to determine the solution.

Secondly, the Act has abolished all rights existing under the common law, including the right to trial by jury, and has substituted the rights and obligations of the Act therefor. Accordingly, there is nothing for jury determination.

Thirdly, while some factual determinations must be made under the terms and provisions of the Act, these factual matters are so bound up with other considerations dealing with the rights and obligations of those operating under the Act as to require a judicial decision, and to permit a jury, who has no

knowledge of these other considerations, to pass upon an isolated question of fact would result in prejudice to the parties.

Fourthly, determination of matters pertaining to the Act by the Court results in a uniform enforcement of rights and obligations. If the majority decision relative to Part II be carried to its logical conclusion, it is possible for an injured workman to receive benefits under the Act from the statutory employer and then sue in the Federal Courts at common law contending the Industrial Commission did not have jurisdiction. If the Court decides the issue, it would be bound by the State Court's decision; if the jury must decide, then it would be not so bound and the Act would not receive uniform enforcement.

FOURTH

The Court committed error in prejudging that if the Court of Appeals remands the case to the District Court, evidence will be adduced which will require the submission of an issue of fact to the jury pursuant to the subject defense under the South Carolina Workmen's Compensation Act. Under the majority Opinion of the Court, as written, the Trial Court would feel compelled to submit an issue of fact to the jury under the defense, regardless of the nature of the testimony which might be offered. How can the Court foretell what testimony will be offered touching the issue and hold in advance, as has been done, that testimony will be offered which will raise an issue of fact for the jury?

CONCLUSION

We respectfully request this honorable Court to grant this Petition for Re-Hearing and to reconsider Part II of the majority opinion delivered on May 19, 1958.

Respectfully submitted,

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CERTIFICATE

The undersigned counsel do hereby certify that this Petition for Rehearing in behalf of Respondent is presented in good faith and not for delay.

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